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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,862	12/10/1999	ALLISON HUBEL	600.451US1	9374

21186 7590 05/30/2002

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

PESELEV, ELLI

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 05/30/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

—The MAILING DATE of this communication appears on the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be filed later than the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be required.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/7/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-8, 11-12, 14, 16-17, 19-22, 24, 26-28, 30-34 and 47-52 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8, 11-12, 14, 16-17, 19-22, 24, 26-28, 30-34 and 47-52 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 17
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Claims 1-8, 11-12, 14, 16-17, 19-22, 24, 26-28, 30-44 and 47-52 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over PCT Patent No. WO 97/35472 for the reasons set forth in the Office Action of October 25, 2000.

Applicant's arguments filed May 7, 2002 2001 have been fully considered but they are not persuasive.

The PCT Patent describes the use of DMSO and serum as optional (see page 7, lines 17-25, teaches a preferred concentration of arabinogalactan between about 14 and 20% (wt./vol.) (Page 7, lines 7-8) and discloses cryopreservation of many different cell types, including blood cells (page 10, line 4). Applicants contend that methods and compositions useful to cryopreserve one cell type are not necessarily the same as the methods and compositions employed for other cell types, as each cell type has different biological and physical properties as shown by Sputtek et al and Hubel. This argument has not been found persuasive because the rejection under 35 USC 103 does not require 100% predictability. Tables 3 and 4 of the specification show that any particular cryopreservation medium is useful for preserving different cell types but to a different degree. Therefore, a person a person having ordinary skill in the art at the time the instant invention was made would have been motivated to use a cryopreservation medium disclosed by PCT Patent for cryopreservation of many different cell types including freshly isolated lymphocytes, hematopoietic stem cells or lymphocytes which are modified ex vivo.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peslev whose telephone number is (703) 308-4616. The examiner can normally be reached on weekdays from 8.30 a.m. to 5.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter, can be reached on (703) 308-4532. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Elli Peslev
ELLI PESELEV
PRIMARY EXAMINER
GROUP 1800